

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Applications of AT&T, Inc. and DIRECTV for) MB Docket No. 14-90
Consent to Assign or Transfer Control of)
Licenses and Authorizations)

**COMMENTS OF THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

The National Association of Telecommunications Officers and Advisors (“NATOA”)¹ submits these comments in response to the Public Notice, released August 7, 2014, in the above-captioned proceeding.² It is our intent that these comments, along with those submitted by others who may be affected by the proposed transaction, will assist the Federal Communications Commission (“FCC”) as it undertakes a full and thorough review of the proposed assignments or transfers of licenses and other authorizations.

I. INTRODUCTION

In discussing the Commission’s transaction review process, FCC General Counsel Jon Sallet wrote that the Commission is tasked “to determine whether the proposed transaction

¹ NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure.

² See Commission Seeks Comment on Applications of AT&T Inc. and DIRECTV to Transfer Control of FCC Licenses and Other Authorizations, Public Notice, MB Docket No. 14-90, DA 14-1129 (rel. August 7, 2014).

would serve “the public interest, convenience, and necessity.”³ Such a determination “should be informed by competition principles . . . [that] look to the impact of practices on consumers and the public interest, not just on competitors. . . . [T]he burden of demonstrating *on the public record* that their proposed transaction is in the public interest” rests with the applicant.⁴ (Emphasis added.)

The Commission has the option of approving a proposed transaction with “conditions designed to ensure the public interest is served. . . . Conditions can be very important because, appropriately constructed and effectively applied, they can remedy public-interest harms that would otherwise occur,” keeping in mind that the “relationship to the remedy of harm is fundamental and it means that not all conditions can serve that role.”⁵ While AT&T has announced several voluntary conditions it plans to undertake in an effort to serve the public interest and help mitigate opposition to the merger, we strongly encourage AT&T – and the FCC – to consider other voluntary conditions and imposed conditions that further the public interest.

II. LACK OF SUPPORT FOR PEG OPERATIONS

AT&T’s application is silent as to Public, Education, and Government (“PEG”) programming and any steps the company may take to promote these vital local community services. While the company’s silence is not surprising owing to its well-known lack of support for PEG programming, it is, nevertheless, unfortunate. Because DIRECTV is under no obligation to carry or financially support PEG programming, any potential efforts by AT&T to

³ Sallet, Jon. “FCC Transaction Review: Competition and the Public Interest” (Blog) The FCC, August 12, 2104, <http://www.fcc.gov/blog/fcc-transaction-review-competition-and-public-interest>

⁴ *Id.*

⁵ *Id.*

eliminate its U-verse video product and replace it with satellite video service would necessarily undercut these local services and is problematic for local governments.

AT&T's position is also in stark contrast to the position taken by Comcast in its proposed merger with Time Warner. There, Comcast has publicly committed that "PEG channels would be protected from migration to digital in the acquired systems that are not yet all-digital (unless otherwise agreed by the LFA), and would be protected from material degradation."⁶ We have urged Comcast to expand upon these initial commitments,⁷ and we strongly urge AT&T to step up to the plate and offer similar proposals, beginning with a very simple declaration acknowledging the important role that PEG services play in promoting localism in communities across the country and the company's intent to continue to financially support such services. We contend that a failure to do is demonstrative that the proposed merger is not in the "public interest."

We would also like to see AT&T make an important voluntary commitment that PEG operators be permitted to use PEG funding for both operational and capital expenses without an offset against franchise fee revenues. This would not lead to an increase in PEG obligations since many of the affected jurisdictions are already subject to an overall cap on PEG funding. For many PEG operators, the ability to use these funds for any PEG-related purpose would enable them to provide better services to their communities and, in some cases, keep the doors

⁶ Cohen, David. "Comcast and Time Warner Announce Merger, Detail Public Interest Benefits and Undertakings" (Blog) Comcast, Feb. 13, 2014, <http://corporate.comcast.com/comcast-voices/comcast-and-time-warner-announce-merger-detail-public-interest-benefits-and-undertakings>

⁷ As we stated in our Comcast/Time Warner merger comments, we would like to see AT&T commit to protecting PEG programming by treating it similarly to local broadcast programming. For example, the company must protect PEG channel placement; provide HD channel carriage; not impose any additional equipment requirements to receive PEG programming; and provide video on demand capabilities.

open and continue to operate. For example, the spending restriction sometimes creates situations where updated capital equipment is available, but with no staff to operate it, or where a capital facility may exist, but with no annual operating funds to keep it running.

Removing the restrictions on the use of PEG funds was recently endorsed by the United States Conference of Mayors and the California State Legislature⁸ and we feel that if AT&T would take a similar stance, it would encourage other providers to permit similar unrestricted uses of PEG funds.

III. LACK OF BROADBAND ADOPTION PROGRAM

AT&T claims that the proposed merger will permit the company to “expand and enhance high-speed broadband service to 15 million customer locations, mostly in underserved rural areas there AT&T does not today provide high-speed broadband service.”⁹ But nowhere in its application does AT&T discuss any plans to promote a low-cost broadband adoption program similar to that provided by Comcast.

When Comcast announced its proposed merger with Time Warner, the company committed that its low-cost broadband adoption program – Internet Essentials – would be extended throughout the territories it would be acquiring in the transaction. According to a July 2014 report, participation in the program now surpasses 350,000 homes or 1.4 million low-income residents.¹⁰ In addition, Comcast has continued the program indefinitely; eligibility has

⁸ Martin, Gary, *Bill To Rescue Public Access TV Passed in Sacramento*, Media Alliance June 17, 2014, <http://www.media-alliance.org/article.php?id=2382>

⁹ See, Description of Transaction, Public Interest Showing, and Related Demonstrations, *In re the Matter of Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, at 50 (filed Jun. 11, 2014) (“AT&T Application”); available at:

<http://apps.fcc.gov/ecfs/document/view?id=7521303307>

¹⁰ See, Third Annual Compliance Report on *Internet Essentials*, the Comcast Broadband Opportunities Program, at 3 (filed July. 31, 2014),

been expanded; speeds have been increased; and an instant approval process has been put in place.¹¹ Unfortunately, this is another area where AT&T's application comes up short. We strongly encourage AT&T to voluntarily commit to offer a similar low-cost broadband adoption service similar to Internet Essentials.

IV. NET NEUTRALITY

NATOA has long advocated for a free and open Internet and recently filed comments urging the Commission to work with all stakeholders in an effort to “craft new [net neutrality] rules that are legally enforceable.”¹² For that reason, we are encouraged by AT&T's proposed merger commitment that it will comply with the “FCC's Open Internet protections established in 2010, regardless of whether the FCC re-establishes such protections for other industry participants in the wake of the D.C. Circuit's vacatur of the 2010 rules.”¹³ However, we are concerned that the company intends to offer such protections for only three years after closing of the merger. We strongly urge that AT&T commit to extending such protections indefinitely in the event the Commission fails to establish new enforceable rules within that timeframe. As such, we encourage the Commission to move quickly on this issue and to craft appropriate Open Internet rules that would apply to all service providers.

V. NEED FOR ENFORCEMENT AND REPORTING REQUIREMENTS

We strongly believe that any voluntary commitments and imposed conditions should be subject to, at a minimum, annual compliance reporting requirements – something that we have

http://www.internetessentials.com/sites/internetessentials.com/files/reports/comcast_internet_essentials_annual_report_2014-07-31_-_fcc_low_res.pdf

¹¹ *Id.*

¹² *See*, Comments of the National League of Cities and the National Association of Telecommunications Officers and Advisors, *In re the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 1 (filed July 11, 2014).

¹³ *See*, AT&T Application at 51.

also advocated for in the Comcast/Time Warner transaction. Indeed, such a requirement is even more important here where AT&T has affirmatively stated that the “combined company will commit to provide FTTP [fiber to the premises] wireline broadband service to 2 million more customer locations” and “will commit to deploy fixed wireless local loop (“WLL”) technology to bring high-speed broadband to approximately 13 million largely rural customer locations.” As such, we urge the Commission to impose, with AT&T input, reasonable, measureable timeframes for full build-out of these promised services.

In addition, as part of the reporting process, NATOA strongly recommends that the Commission actively seek public comment, especially from affected stakeholders, concerning the company’s adherence to these commitments of increased broadband deployment. We also believe that the Commission should impose sufficient and enforceable compliance safeguards to ensure that any violations of these or other commitments or conditions are immediately remedied. Also, any potential penalties for failure to comply with the build-out timeframes must be sufficiently punitive to ensure full compliance.

VI. CONCLUSION

We respectfully request the Commission to consider our comments as it continues its review of the proposed transaction.

Respectfully submitted,



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